



California Regional Water Quality Control Board

Lahontan Region




Linda S. Adams
Secretary for
Environmental Protection

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
www.waterboards.ca.gov/lahontan

Arnold Schwarzenegger
Governor

MEMORANDUM

TO: Water Board Members

FROM: 
HAROLD J. SINGER
EXECUTIVE OFFICER
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: OCT 02 2008

SUBJECT: EXEMPTION TO DISCHARGE PROHIBITION CONTAINED IN THE
WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION –
SOMERS' SUMMIT CREEK BANK STABILIZATION PROJECT,
NEVADA COUNTY

On October 6, 2008, I intend to sign the enclosed letter granting an exemption to the discharge prohibition specified in the *Water Quality Control Plan for the Lahontan Region* for the Somers' Summit Creek Bank Stabilization Project (Project) in Nevada County. The exemption will allow the project proponent to implement erosion control and bank stabilization activities along Summit Creek, a tributary to Donner Lake. An expedited public notice period is necessary for this Project due to the condition of the bank along this portion of Summit Creek and the lateness in the season.

The Project site is located on the southern bank of Summit Creek west of Donner Lake. The Project would stabilize the bank by placing rock and planting vegetation along 155 linear feet of bank. The Project would place 1,070 square feet of rock and vegetation along 155 linear feet and within the 100-year floodplain of Summit Creek. The Project meets requirements for an exemption to the discharge prohibition.

A public notice soliciting comments on the proposed Project will also be posted on the Water Board's website today.

If you have any questions or comments regarding this matter, please contact Tobi Tyler at (530) 542-5435.

Enclosure: Draft Water Quality Certification Order and 100-year Floodplain Exemption

TT/clhT: Somers Summit Creek Banks Stablzn FPE memo 9_30_08 TT.doc
[File: 6A090808001 / Somers Summit Creek Bank Stabilization Project/ Nevada County]

California Environmental Protection Agency





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Patrick and Laura Somers
1417 Drake Ave.
Burlingame, CA 94010

ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION, SOMERS' SUMMIT CREEK BANK STABILIZATION PROJECT, NEVADA COUNTY, WDID NO. 6A290706002

The California Regional Water Quality Control Board, Lahontan Region (Water Board) received project information and an application filing fee from you to complete an application for Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) and exemption from a waste discharge prohibition in the Water Board's *Water Quality Control Plan for the Lahontan Region* (Basin Plan) for the above-referenced Project Nevada County. This Order for WQC and waste discharge prohibition exemption is based upon the information provided in the application and subsequent correspondence.

Any person aggrieved by this action of the Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

PROJECT DESCRIPTION

Table of Project Information:

WDID Number	6A290706002
Applicant	Patrick and Laura Somers 1417 Drake Ave. Burlingame, CA 94010
Applicant's Agent	John Hudson, Holdrege and Kull Consulting Engineers 10775 Pioneer Trail, Suite 213 Truckee, CA 96161 Phone no: (530) 587-5156
Project Name	Somers' Summit Creek Bank Stabilization Project (Project)

California Environmental Protection Agency

Table of Project Information continued:

Project Purpose and Description	To stabilize a section of bank along Summit Creek by placing rock and vegetation along 155 linear feet of stream bank.
Location (closest City & County)	16090 Pine Street, Truckee, Nevada County
Location Latitude/Longitude	Latitude 39.322, Longitude -120.29255
Hydrologic Unit(s)	Truckee River Hydrologic Area No. 635.20, within the Truckee River Hydrologic Unit No. 635.00
Project Area	0.09 acre (4,000 square feet)
Receiving Water(s) Name	Summit Creek
Water Body Type(s)	Creek
Area of Water(s) of the U.S. within the project area	0.04 acres (1560 square feet)
Area of Temporary Fill/Excavation of Water(s) of the U.S.	None.
Area of Permanent Fill/Excavation of Water(s) of the U.S.	1,070 square feet of fill (0.002 acres)
Linear feet of Permanent Fill/Excavation in Water(s) of the U.S. (WOUS)	155 linear feet of fill.
Volume of Fill/Excavation to WOUS	76 cubic yards of fill.
Federal Permit(s)	The applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under Nationwide Permit 13, pursuant to Clean Water Act section 404.
Non-Compensatory Mitigation	Construction will occur in late summer and early fall when the drainage is at its lowest in water level. Site-specific Best Management Practices (BMPs) will be used throughout the construction period and for winterization.
Compensatory Mitigation	None required.
Applicable Fees	\$500.00 (\$500.00 application fee)
Fees Received	\$500.00
Fees due	\$0.00

CEQA COMPLIANCE

The Somers' Summit Creek Bank Stabilization Project is categorically exempt from the California Environmental Quality Act (CEQA), according to the California Code of Regulations (CCR) title 14, section 15333(d)(5), habitat restoration projects. The Water Board will file a Notice of Exemption with the State Clearinghouse concurrently with this Order.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

The Water Board has adopted a *Water Quality Control Plan for the Lahontan Region* (Basin Plan), which specifies the following discharge prohibition:

"4(c) The discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic or earthen materials to lands within the 100-year floodplain of the Truckee River or any tributary to the Truckee River is prohibited."

The proposed Project involves discharges of rock within the 100-year floodplain of Summit Creek, a tributary to Donner Lake and the Truckee River. The Water Board may grant an exception to the above-cited prohibition under certain conditions.

PROHIBITION EXEMPTION

The Basin Plan allows exemptions to the above-cited discharge prohibition for projects that meet the following exemption criteria:

1. *The Project purpose is included in one or more of the five categories listed in Section 4.1 of the Lahontan Basin Plan: "(1) projects solely intended to reduce or mitigate existing sources of erosion or water pollution, or to restore the functional value to previously disturbed floodplain areas; (2) bridge abutment, approaches, or other essential transportation facilities identified in an approved county general plan; (3) projects necessary to protect public health or safety or to provide essential public services; (4) projects necessary for public recreation; and (5) projects that will provide outdoor public recreation within portions of the 100-year floodplain that have been substantially altered by grading and/or filling activities which occurred prior to June 26, 1975."*

The Project purpose satisfies the first criterion above since it proposes to reduce a source of erosion along the Summit Creek's bank.

2. *There is no reasonable alternative to locating the project or portions of the project within the 100-year floodplain.*

There is no alternative to locating the Project or portions of the Project within the floodplain because the source of the erosion problem, the undercut banks along Summit Creek, are within the 100-year floodplain and below ordinary high water. Following Donner Lake dam construction in 1928, this area of Summit Creek is inundated each year from high lake levels during the spring snow melt. This is followed by late summer drop in lake levels as water is released from Donner Lake. The inundation causes saturation of the soils surrounding the creek. The yearly fluctuation in inundation and depletion has caused some slumping along the bank and loss of sediment under tree roots along the bank (undercutting). There is no alternative to the Project to install boulders and plant native vegetation along the bank to control erosion.

3. *The project, by its very nature, must be located within the 100-year floodplain. (The determination of whether or not a project, by its very nature, must be located within the 100-year floodplain shall not apply to projects in category 5, Section 4.1 of the Lahontan Basin Plan, and shall be based on the type of project proposed, not the particular site proposed.)*

The Project, by its very nature, must be located within the 100-year floodplain because the erosion is occurring within the 100-year floodplain along the creek bank. Therefore, the erosion control remedies, by their very nature, must also be location within the 100-year floodplain.

4. *The project incorporates measures that will ensure any erosion and surface runoff problems caused by the project are mitigated to levels of insignificance.*

Project implementation will occur when Summit Creek is at its lowest level, boulders will be washed prior to placement, temporary sediment control measures (silt fences and straw wattles) will be in place during construction, and the site will be stabilized prior to increased winter stream flow. The Project, therefore, will incorporate temporary and permanent BMPs that will ensure any erosion or surface runoff problems caused either by Project construction or by the failing banks will be mitigated to levels of insignificance.

5. *The project will not individually or cumulatively with other projects, directly or indirectly, degrade water quality or impair beneficial uses of water.*

The Project will temporarily employ rock-filled burlap bags below the unstable channel slope to divert any unanticipated flow of water into the Project site. The Project will result in only minor temporary and permanent impacts within the 100-year floodplain and will implement measures, as outlined above, to minimize erosion and surface runoff. As a result, the Project will not degrade water quality or impair beneficial uses of water.

6. *The project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions. All 100-year floodplain areas and volumes lost as a result of the project must be completely mitigated by restoration of previously-disturbed floodplain within or as close as practical to the project site. The restored, new, or enlarged floodplain shall be sufficient area and volume to more than compensate for the flood flow attenuation capacity, surface flow treatment capacity, and ground water flow treatment capacity which are lost as a result of the project.*

The Project will not reduce flood-flow attenuation capacity, surface flow treatment capacity or groundwater flow treatment capacity. Bank material has been lost due to erosion thereby increasing channel width in this area. Flood-flow attenuation capacity will, therefore, not be substantially altered from previous conditions prior to loss of the bank material. Vegetation will be incorporated with rock placement to help maintain natural channel roughness. Rock will be seated into the bank to not reduce channel capacity. The intent of the Project is to protect the stream banks and help maintain groundwater storage in the natural floodplain. Surface flow across the floodplain will be maintained and enhanced by preventing further slumping and loss of bank material to

the channel and preserving native vegetation to the maximum degree possible. New plants will be added to increase riparian zone vegetation, thereby maintaining beneficial uses of the creek. A member of the Truckee River Watershed Council, Villager Nursery, will be consulted with for the placement and native vegetation on the Project. The Project, therefore, should not reduce the flood flow attenuation capacity, surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions.

AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board affirmed the authority of the Lahontan Water Board Executive Officer to grant exceptions to the 100-year floodplain discharge prohibition in the Truckee River Hydrologic Unit for specific discharges where the proposed Project meets the conditions required for a waiver of waste discharge requirements or for approval under general waste discharge requirements or a general National Pollutant Discharge Elimination System permit (NPDES). The Project will be regulated under this WQC Order and the terms and conditions of the Statewide General Waste Discharge Requirements in Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification."

The other criteria that the Project must satisfy for delegation authority to be granted to the Water Board Executive Officer are as follows:

1. *The project is within the following size limitations:

less than 1000 square feet of new impervious coverage, or
less than 2000 square feet of new ground disturbance, or
less than 100 cubic yards of fill or excavation; or*
2. *The project's primary purpose is to reduce, control, or mitigate existing sources of erosion or water pollution; and*
3. *The project meets the exemption criteria set forth in the Basin Plan.*

The Project involves 1,070 square feet of permanent pervious fill and approximately 76 cubic yards of fill and excavation associated with Summit Creek floodplain, which is less than the above size limitations.

PROHIBITION EXEMPTION GRANTED

The Water Board has notified the Applicant and interested agencies and persons of its intent to adopt this prohibition exemption. The Water Board Executive Officer has considered all comments and determined that the Project satisfies the Basin Plan exemption criteria listed above. I hereby grant an exemption to the above-stated Basin Plan prohibition 4.c. for the Project.

SECTION 401 WATER QUALITY CERTIFICATION**Authority**

Clean Water Act (CWA) section 401 (33 U.S.C., paragraph 1341) requires that any applicant for a CWA section 404 permit, who plans to conduct any activity that may result in discharge of dredged or fill materials to waters of the United States, must provide to the permitting agency a certification that the discharge will be in compliance with applicable water quality standards of the state in which the discharge will originate. No Section 404 permit may be granted (or valid) until such certification is obtained. The Applicant submitted a complete application and the \$500 application filing fee required for Water Quality Certification under Section 401 for the Somers' Summit Creek Bank Stabilization Project. The Applicant has applied for ACOE authorization to proceed under a Nationwide Permit 13, pursuant to CWA section 404.

California Code of Regulations (CCR) title 23, section 3831(e) grants the Lahontan Water Board Executive Officer the authority to grant or deny water quality certification for projects in accordance with CWA section 401. The Project qualifies for such water quality certification.

Standard Conditions

Pursuant to CCR title 23, section 3860, the following standard conditions are associated with this certification:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to California Water Code section 13330, and CCR title 23, section 3867.
2. This certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license unless the pertinent certification application was filed pursuant to CCR title 23, section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action must be conditioned upon total payment of the full fee required under CCR title 23, section 3833, unless otherwise stated in writing by the certifying agency.
4. Neither project construction activities nor operation of the project may cause a violation of the Water Quality Control Plan for the Lahontan Region (Basin Plan), may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the California Water Code.
5. The project must be constructed and operated in accordance with the project described in the application for water quality certification that was submitted to the Water Board. Deviation from the project description constitutes a violation of the conditions upon which the certification was granted.

Additional Conditions

Pursuant to CCR title 23, section 3859(a), the following additional conditions are associated with this certification:

1. The Applicant must maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies, and must provide a copy to all contractors working on the Project.
2. No excess soil, debris, cement, concrete (or wash water therefrom), oil or petroleum products must be allowed to enter into or be placed where it may be washed from the Project site by rainfall or runoff into the creek. When operations are completed, any excess material must be removed from the Project work area and any areas adjacent to the work area where such material may be transported into the creek.
3. During project construction, disturbance of streambed must be kept to a minimum, and work areas must be effectively isolated from flowing water.
4. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
5. An emergency spill kit must be at the project site at all times.

Enforcement

1. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of Clean Water Act section 401(d), the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
2. In response to a suspected violation of any condition of this certification, the State Water Resources Control Board (State Water Board) or the Lahontan Water Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring report the State Water Board or Lahontan Water Board deems appropriate, provided that the burden, including costs, of the reports must be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
3. In response to any violation of the conditions of this certification, the Lahontan Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

Section 401 Water Quality Certification Requirements Granted

I hereby issue an order certifying that any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this WQC.

Except insofar as may be modified by any preceding conditions, all WQC actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicant's project description and the terms specified in this WQC order, and (b) compliance with all applicable requirements of the Basin Plan.

We look forward to working with you in your efforts to protect water quality. If you have questions, please contact Tobi Tyler, Water Resources Control Engineer, at (530) 542-5435, or Alan Miller, Chief, North Basin Regulatory Unit, at (530) 542-5430. Please use the WDID in the subject line for future correspondence concerning this project.

HAROLD J. SINGER
EXECUTIVE OFFICER

cc: John K. Hudson
Dave Smith / Wetlands Regulatory Office (WTR-8), US EPA, Region 9
Erin Hess / U.S. Army Corps of Engineers, Sacramento Office
Bill Orme / State Water Resources Control Board, Division of Water Quality
Michael Lavalle, Town of Truckee